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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 United States, ) CR 95-345 RSWL  
12 )  
13 Plaintiff, )  
14 vs. ) ORDER RE: DEFENDANT JOE  
15 ) HERNANDEZ'S MOTION FOR  
16 Joe Hernandez, ) REDUCTION OF SENTENCE  
17 ) AND FOR THE APPOINTMENT  
18 ) OF COUNSEL [10392]  
19 Defendant. )  
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18 Currently before this Court is Defendant Joe  
19 Hernandez's ("Defendant") Motion for Reduction of  
20 Sentence Pursuant to 18 U.S.C. § 3582(c) and for the  
21 Appointment of Counsel. Having considered all papers  
22 submitted the Court **HEREBY RULES AS FOLLOWS:**

23 Defendant's Motion for Reduction of Sentence  
24 Pursuant to 18 U.S.C. § 3582(c) is **DENIED**. On May 30,  
25 1997, Defendant was convicted of seven different  
26 counts, which included conspiracy to distribute cocaine  
27 base in violation of 21 U.S.C. § 846. At the time  
28 Defendant was sentenced in 1997, United States

1 Sentencing Guidelines § 2D1.1 required a conviction  
2 involving 1.5 kilograms of cocaine base to qualify as a  
3 level 38 offender, the maximum offense level for drug  
4 distribution. On August 3, 2010, Congress enacted the  
5 Fair Sentencing Act of 2010 ("FSA"), which raised the  
6 cocaine base quantity thresholds for mandatory minimum  
7 and statutory maximum penalties for cocaine base  
8 offenses under 21 U.S.C. § 841(b) and § 846. The FSA  
9 directed the Sentencing Commission to promulgate  
10 amendments to the Sentencing Guidelines. Accordingly,  
11 Amendment 750, effective November 1, 2011, lowered the  
12 offense levels for cocaine base offenses listed in §  
13 2D1.1. Currently, 8.4 kilograms of cocaine base is  
14 required to constitute a base offense level of 38.

15 Pursuant to Defendant's sentencing, this Court made  
16 factual findings that Defendant was conservatively  
17 estimated to have been involved in trafficking a  
18 quantity of cocaine base substantially exceeding 8.4  
19 kilograms. As such, if Defendant were sentenced today  
20 his base offense level under the amended Sentencing  
21 Guidelines would remain at 38. Therefore, Amendment  
22 750 has no effect on Defendant's guideline range, and  
23 reduction of sentence pursuant to 18 U.S.C. § 3582(c)  
24 is not appropriate. Additionally, the nature of  
25 Defendant's convictions and the factors set forth in 18  
26 U.S.C. § 3553(a) weigh against reduction of sentence as  
27 well.

28 In addition, Defendant's request for the

1 appointment of counsel is **DENIED**. The Court finds that  
2 Defendant has no constitutional right to an attorney  
3 after his first appeal and he has not shown that  
4 representation is necessary here. United States v.  
5 Angelone, 894 F.2d 1129, 1130 (9th Cir. 1990)  
6 ("Prisoners do not have a constitutional right to  
7 counsel when mounting collateral attacks upon their  
8 convictions."); see also Pennsylvania v. Finley, 481  
9 U.S. 551, 555 (1987). The Court also finds that  
10 because the FSA would not alter Defendant's sentence,  
11 appointment of an attorney to bring a motion for  
12 reduction of Defendant's sentence is not necessary.  
13 Accordingly, Defendant's Motion is **DENIED** in its  
14 entirety.

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16 **IT IS SO ORDERED.**

17 DATED: March 9, 2012

RONALD S.W. LEW

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HONORABLE RONALD S.W. LEW

Senior, U.S. District Court Judge